STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SUPERSHUTTLE OF ORANGE COUNTY, INC.

Employer

and Case 21-RC-20060

GENERAL TRUCK DRIVERS, OFFICE,
FOOD & WAREHOUSE UNION, TEAMSTERS
LOCAL 952, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

and

EMPLOYEES ACTION REPRESENTATIVES

Intervenor

SUPPLEMENTAL DECISION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. On June 21, 1999, the Acting Regional Director for Region 21 issued a Decision and Direction of Election. On July 2, 1999, the Intervenor and the Employer filed with the Board, a Request for Review of the Decision and Direction of Election. On July 22, 1999, the Board issued an Order Remanding this case to Region 21 "for further analysis, including a reopening of the record for a determination as to whether the parties intended the collective-bargaining agreement to resolve the outstanding unfair labor practice charges." On July 23, 1999, pursuant to the Acting Regional Director's Direction of Election, an election was conducted among

the employees in the unit found appropriate. The ballots cast at the election were impounded pending the resolution of the issues raised herein.

Pursuant to the Board's Order Remanding, on July 29, 1999, the Regional Director for Region 21 issued an Order Reopening Record and Notice of Hearing, and pursuant to said Order, a hearing was conducted on August 11, 1999.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The hearing herein was conducted to determine whether the parties (the Employer and the Intervenor herein) "intended the collective-bargaining agreement to resolve the outstanding unfair labor practice charges."

The record herein reveals that the Intervenor filed unfair labor practice charges against the Employer on November 20, 1998 (in Case 21-CA-33065[1]), and on November 24, 1998 (in Case 21-CA-33068[2]), both alleging violations of Section 8(a)(1) and (5) of the Act, alleging that the Employer had

[1] The record reveals that an amended charge was filed on April 21, 1999 in Case 21-CA-33065. The amended charge added an allegation that the Employer had failed and refused to provide relevant information needed by the Intervenor to conduct bargaining, to the general allegation that the Employer had bargained in bad faith.

[2] In addition to the general claim of bad faith bargaining, this charge further alleged that the Employer unilaterally altered the grievance procedures applicable to the Unit employees.

engaged in bad-faith bargaining. Both charges were dismissed by the Regional Director on May 13, 1999[3], on the basis that they were moot in light of the collective-bargaining agreement attained between the Employer and the Intervenor[4]. On May 25, the Intervenor appealed the dismissal of the ULP charges and said dismissals were sustained by the Office of Appeals on June 23.

At the instant hearing, the Employer's general manager, Todd Emmons, testified that he was the Employer's chief negotiator in the bargaining with the Intervenor. He testified that there were some 15 to 17 bargaining sessions in late 1997 and into 1998; and that sometime in November 1998, the Employer concluded that an impasse in negotiations had been reached. Following the declaration of impasse, and following the filing of the ULP charges as noted above, the Employer and the Intervenor resumed discussions and ultimately resumed their bargaining sessions.

The record reflects that in about January, Emmons and the Intervenor's president Barry Hansen[5], began having conversations which led to additional bargaining sessions. Emmons recalled that Hansen initiated the discussion in a conversation by noting that the Intervenor still desired to continue negotiating in an attempt to reach an agreement. Emmons

[3] All dates hereinafter are 1999 unless otherwise stated.

[4] Thus, a merit determination on the ULP charges was never made. There has been no determination made by the Board, at any level, that any party has violated the Act in the dealings between the Employer and the Intervenor.

[5] Hansen, who did not testify at the instant hearing, is also an employee of the Employer.

replied that the Intervenor would need to demonstrate movement from the positions taken at the time of the impasse. Hansen responded that he thought the Intervenor could move further; and then he added that if they could reach an agreement, the Intervenor would consider it a settlement of the ULP charges that had been filed by them.

On February 16, Hansen presented to Emmons a verbal proposal for a new contract. According to Emmons, included in the proposal was a verbal proposal that if the parties reached an agreement, the Intervenor would consider the collective-bargaining agreement a settlement of the unfair labor practice charges it had filed and that the charges would be withdrawn. Hansen and Emmons continued informal discussions in February and March. Thereafter, the Employer and the Intervenor did not formally meet again until April 8, at the offices of the Federal Mediation and Conciliation Services (FMCS). At this meeting, the parties discussed economic issues related to the contract proposal and they also discussed the unfair labor practice charges. According to Emmons, the Intervenor presented a package proposal, that if the Employer accepted, the Intervenor would consider the collective-bargaining agreement attained as settlement of the unfair labor practices and that they would then withdraw their ULP charges. An agreement was not attained at this April 8 meeting, and another bargaining session was scheduled for April 22 at the Employer's facility. Emmons recalled that at about the time of the April 8 meeting, he discussed with Hansen that a representation petition had been

filed by the Teamsters union[6]. Thus, Emmons questioned whether they would run into any legal problems in continuing to bargain while the representation petition was pending. Emmons testified that Hansen provided him with copies of Board decisions in Douglas Randall[7] and Liberty Fabrics[8], and thereby convinced him that it was appropriate to continue negotiations under the authority of the noted Board cases.

At the April 22 meeting, the parties discussed economic proposals, and further discussed the pending ULP charges. According to Emmons, Hansen mentioned that upon attainment of a contract, the Intervenor's attorney would take care of withdrawing the ULP charges. An agreement was not reached on April 22. The parties met again on Friday, April 23 at which time, the final economic issue was resolved and an agreement was reached, subject to ratification by the Unit employees. At the meetings on April 22 and April 23, there was no mention of the Intervenor's amended charge in Case 21-CA-33065 which had been filed on April 21; nor was there any discussion regarding the Employer's alleged failure to provide relevant information as raised by the amended charge.

A ratification vote on the agreement reached was thereafter conducted over the weekend, and then on Monday, April 26, the ratification votes were counted, which results

[6] The Petition herein was filed on March 16.

[7] Supra.

[8] Liberty Fabrics, Inc., 327 NLRB No. 13 (1998).

revealed approval of the contract[9]. The Employer and the Intervenor thereafter signed the contract on April 26. Emmons believed that, pursuant to his prior conversation with Hansen, the Intervenor would request that the ULP charges be withdrawn.

The Intervenor's attorney, Douglas F. Olins, testified that he filed the amended charge in Case 21-CA-33065 on April 21, because at the time he had recently become aware that the Intervenor had made an information request sometime during the month of September 1998 in the course of its bargaining with the Employer, and that the information had never been provided. Thus, in order to preserve the issue in case no collective-bargaining agreement was attained, the Intervenor filed the amended charge as noted above[10].

According to Olins, after the Contract was signed, the Intervenor did not withdraw the unfair labor practice charges because Region 21 specifically informed him in a letter dated May 5, that, because the ULP charges had been dismissed, the petition in Case 21-RC-20060 would not be dismissed, notwithstanding the attainment of the collective-bargaining agreement between the Employer and the Intervenor. The Intervenor repeated its contention that the instant petition should be dismissed in its May 25, appeal to the dismissal of the ULP charges, arguing that the dismissals "should be reversed and

[9] The contract was ratified by a "majority" of the unit employees who voted. The record does not reveal how many employees participated in the ratification vote; nor does it reveal how many employees voted in favor of ratification.

[10] Olins noted that the Board's 6 month statute of limitations was getting close, so he did not want to risk not being able to raise the issue if it became necessary.

the unfair labor practice charge[s] reinstated. Furthermore, the Regional Director should be directed to dismiss the petition; E.A.R [the Intervenor] will then withdraw the unfair labor practice charge[s]." Olins stated this same position to the Region in his letter dated April 29, and in his Appeal to the dismissal of the unfair labor practice charges. As is noted above, notwithstanding the Intervenor's arguments, the Office of Appeals denied the appeal and upheld dismissal of the ULP charges.

Based on the record presented herein, it is concluded that the Intervenor and the Employer did intend for their collective-bargaining agreement to settle all unfair labor practice charges. The issue, on reconsideration, pursuant to the Order Remanding, is whether the intent of the Employer and the Intervenor to settle the unfair labor practice charges filed by reaching agreement on a collective-bargaining agreement, mandates the dismissal of the instant Petition.

In its Order Remanding, the Board noted that its decision in Douglas-Randall, 320 NLRB 431 (1995), is not limited solely to cases involving decertification petitions. In Douglas-Randall, the Board considered the effect of a settlement agreement resolving 8(a)(5) and (1) charges reflected in a complaint issued by the Region in question, on the processing of a pending decertification petition. The Board concluded that "[a]n employer's agreement to settle outstanding unfair labor practice charges and complaints by recognizing and bargaining with the union will require final dismissal, without provision

for reinstatement, of a decertification petition or other petition challenging the union's majority status filed subsequent to the onset of the alleged unlawful conduct."

It is noted that in both Douglas Randall and in Liberty Fabrics, the Board considered situations where the General Counsel, via Regional determination, had concluded that the employers in question had committed violations of Section 8(a)(5) of the Act, and had accordingly issued complaints against the respective employers. Thus, in dismissing the representation petitions, the Board concluded in those cases, that the parties' signing of collective-bargaining agreements constituted a settlement of the unfair labor practice allegations raised in the complaints. Because the General Counsel in those cases administratively determined that unfair labor practices had been committed by the employers prior to the filing of the petitions in question, the Board further concluded that said representation petitions must also necessarily be dismissed. The Board noted in Douglas Randall, supra at 434, that dismissal of the petition would limit a "petitioner's right to seek decertification of the union. That limitation, however, is justified by the unfair labor practice that the employer has allegedly committed, and by the remedial steps it has voluntarily undertaken." As is noted above, there has been no administrative determination that the Employer herein committed any unfair labor practices as no complaint has ever been issued against the Employer[11]. Thus, this constitutes a significant deviation from the scenario considered in Douglas Randall. Here, the employees who seek to be represented by the Petitioner and who provided to the Petitioner sufficient support to constitute a showing of interest, are those who would be effectively disenfranchised by a dismissal of the Petition. There is no counter-balance justification for said

[11] Under the present scenario, there can be no argument that the Employer's conduct contributed to employees' disaffection toward the incumbent union, as there was no administrative determination that sufficient evidence existed to warrant issuance of a Complaint alleging that the Employer acted unlawfully.

disenfranchisement as the Employer never was determined to have violated the Act.

A dismissal of the petition under these circumstances presented here, would permit an Employer and an incumbent union to forever eliminate the possibility of another union filing a representation petition to achieve representation of the Unit employees. The incumbent union only has to file a charge, even if there is no merit to it, and then, before a merit determination can be made on the charge, to accede to any employer demands and sign a contract, to effectively eliminate any challenge to its representative status. In Douglas Randall, the Board, at 435, noted: "Simply filing an unfair labor practice charge, however, does not result in dismissal of a pending representation petition. When charges are unsupported, they will, as now, be dismissed and the petition will be processed promptly." In the present case, in fact, the unfair labor practice charges were dismissed[12].

In its brief, the Employer contends anew that the Petition must be dismissed because the contract between the Employer and the Intervenor should serve a contract bar to the filing of the Petition, citing Livent Realty, 328 NLRB No. 1 (April 7, 1999). As noted in the prior Decision and Direction of Election, at the time that the Petition was filed, the parties

[12] Contrast the instant record to the record considered by the Board in Liberty Fabrics where the Board, at pg.1 and at fn.3, noted as significant that "...this alleged conduct was in derogation of the bargaining relationship, and the Regional Director found that there was sufficient basis to warrant issuance of an unfair labor practice complaint." Here, the Regional Director has made no similar finding of a violation of the Act.

had not attained a collective-bargaining agreement; thus no contract bar existed. Moreover, it is noted that Livent Realty dealt with a situation where an employer granted voluntary recognition to the union therein, and they then embarked on negotiations for an initial agreement. The Board concluded that "the Employer's voluntary recognition of the Intervenor should bar the instant petition because a reasonable time for bargaining had not yet elapsed." Supra at 1. In the case at hand, the Intervenor's status was not as a result of voluntary recognition, but was as a result of the Board-conducted election and certification from 1997. Thereafter, the Employer and the Intervenor embarked on their bargaining as noted above, through the first few months of 1999, well in excess of the 1-year certification year as provided by the Board procedures. It is therefore concluded that the Employer's argument in this regard, is misplaced[13].

In conclusion, notwithstanding the Intervenor's and the Employer's intent to resolve the unfair labor practice charges on file in reaching agreement on a new collective-bargaining agreement, because no administrative merit determination was ever made concluding that the Employer had engaged in unfair labor practices prior to the filing of the instant Petition, the considerations requiring the dismissal of the petitions in

[13] The Employer also argues that "[T]he agreement was ratified by a majority of the union membership which the Teamsters now seek to represent" as support for its contention. The record, however, as noted above, does not reveal how many unit employees voted in the ratification vote, or whether a majority of the unit employees voted in favor of ratification. Thus, the argument is without support in the record.

Douglas-Randall and in Liberty Fabrics, are not present, and there is no basis for the dismissal of the instant Petition.

In its post-hearing brief, the Intervenor asserts that there was disaffection among the Unit employees caused by the Employer's unfair labor practices, which caused the employees to have the Petition filed herein. The noted assertion is without record support because the Region never completed its investigation and never concluded that any unfair labor practices had occurred. Thus, the Intervenor's assertion is mere speculation.

Based on the above-noted consideration, upon reconsideration, the undersigned adheres to the Acting Regional Director's determination expressed in the Decision and Direction of Election dated July 6, 1999, that the Petition herein not be dismissed. Thus, I will proceed with the further processing of the Petition herein, including the counting of the ballots cast at the July 23rd election.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 10570. This request must be received by the Board in Washington by 5 p.m., EDT, on September 9, 1999.

DATED at Los Angeles, California, this 26th day of August, 1999.

/s/William M. Pate
William M. Pate
Acting Regional Director
Region 21
National Labor Relations Board

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